

Michigan Court of Appeals

Appellee Handbook

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Introduction

The purpose of this packet is to assist non-attorneys who intend to represent themselves when an appeal has been filed by the opposing party in a case, usually the party who lost in the lower court.

The actions and documents described in this manual are based on the Michigan Court Rules (MCR), which are the procedural rules governing all courts in Michigan. MCR 7.201 - 7.219 are the rules specifically written for the Court of Appeals, although other rules also apply. For your convenience, references to the applicable court rules are provided throughout this manual in **inverse shading**. While this manual presents the current interpretation of the current rules, the rules and their interpretations may change at any time. You can find a copy of the Michigan Court Rules at any law library, law school book store or local court house.

CAUTION: The publication of this manual should not be viewed as encouragement to represent yourself. You would be well-served to retain an attorney to handle this matter for you. Attorneys have the experience and training to handle legal matters such as this, and representing yourself can involve a great deal of time and effort, and cause a great deal of frustration.

What is an Appeal?

An appeal is a request made to a higher court to review the decision of a lower court to determine if the lower court's decision on an issue was correct. The party appealing the lower court ruling is called the "appellant," and the party on the opposite side of the case is called the "appellee."

Types of Appeals

There are two (2) types of appeals to the Court of Appeals:

1. A **claim of appeal** is an appeal that a statute or court rule gives a person the right to file. If all the required documents are filed correctly within the time allotted, the Court of Appeals must review the substance of the arguments and issue a decision on the merits. **MCR 7.204**
2. An **application for leave to appeal** is a request for the Court of Appeals to review an appeal for which there is not an automatic right to file. The Court of Appeals will decide whether it will grant review based on the content of the application. If the Court grants the application, then it will review the substance of the arguments and issue a decision on the merits. **MCR 7.205**

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What You Can Do When an Appellant Files an Appeal “Against” You

An appellee does not have to do anything. The appellant carries the burden of initiating the appeal and moving the case forward to decision. **See MCR 7.204(B), 7.205(B), 7.210(B)(1)(a), 7.212(A)(1) and 7.217(A).** However, if you want to be kept apprised of the filings and decisions in the case, or you want to have the judges hear your side of the case, there are at least two or three documents you will want to file.* Those are covered on the following pages. **NOTE: Anytime you file a document with the Court, you must also send a copy to the appellant. You must then file a proof of service with the Court, stating the document you served, the date it was served, and how it was served. A Proof of Service form is described and shown on pp 23-24 in this manual.**

* “File” means to deliver a document to a clerk’s office of the Court of Appeals, and the acceptance of that document by a clerk with the intent to enter it into the record of the Court. **MCR 7.202(5)** You may file a document at any of the four clerk’s offices listed below. **MCR 7.201(B)(2)** Hours are from 9 a.m. to 5 p.m., Monday - Friday, except holidays.

Cadillac Place
3020 West Grand Boulevard, Suite 14-300
Detroit, MI 48202-6020
Telephone: (313) 972-5678

American Center Building
27777 Franklin Rd., Suite 645
Southfield, MI 48034-8256
Telephone: (248) 353-6763

Hall of Justice
925 W. Ottawa St., PO Box 30022
Lansing, MI 48909-7522
Telephone: (517) 373-0786

State of Michigan Office Bldg.
350 Ottawa St. NW
Grand Rapids, MI 49503-2349
Telephone: (616) 456-1167

Appearance

To assure that you receive copies of all documents and correspondence that appellant files in the Court, and copies of any correspondence or decision that the Court issues, you should file an appearance. **MCR 7.204(G)** An appearance is a document in which you indicate that you are participating in the appeal.

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

NOTE: You may use appellant's claim of appeal or application for leave to appeal as a guide for items (1) - (5) if you wish. **NOTE:** You probably will not know the Court of Appeals number (COA No.) yet, so you may leave that blank.

- (1) The name(s) of the plaintiff(s) in the lower court action, as it/they appear in the lower court caption.
- (2) If you were the plaintiff in the lower court, then put the word "Appellee" in the **shaded** area. Otherwise, put the word "Appellant(s)."
- (3) Your case number in the lower court. It should look something like "2000-123456-DM." You can obtain this number from any of your lower court case documents.
- (4) The name(s) of the defendant(s) in the lower court action, as it/they appear in the lower court caption.
- (5) If you were the defendant in the lower court, then put the word "Appellee" in the **shaded** area. Otherwise, put the word "Appellant(s)."
- (6) Your name as it appears in the caption.
- (7) The current date.
- (8) You must sign the appearance.
- (9) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.] **Please send this Court a change of address notification immediately if you move.**

STATE OF MICHIGAN
IN THE COURT OF APPEALS

(1) _____,
(2) _____ Plaintiff-_____, COA No. _____.
(3) v _____ Lower Ct/Tribunal. No. _____.
(4) _____,
(5) _____ Defendant-_____.

APPEARANCE

(6) _____ appears in this appeal as appellee.

(7) Date: _____

(8) _____

(9) _____

Answer to Application

If appellant filed a claim of appeal, rather than an application, you can skip this section.

If appellant filed an application for leave to appeal, you may wish to answer the application; that is, tell the judges why they should not grant the request to accept this appeal. **MCR 7.205(C)**

WHEN must you file an answer to the application?

You must file your answer to an application for leave to appeal within 21 days of the date on the proof of service with the application.

HOW must you file the answer?

You must file five (5) copies of the answer, one signed. **MCR 7.205(C)(1)**. Remember that you must also serve the appellant with a copy of the answer and file a proof of service with the Court. **MCR 7.205(C)(2)** The first page of the answer will be a cover page.

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

- (1)** The caption as it appeared on your appearance, or you may copy the caption from the application for leave to appeal if you wish.
- (2)** Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.] **Please send this Court a change of address notification immediately if you move.**

MCR 7.205(C), 7.212(C)(1) & (D)(1)

The rest of your answer should be in the general format of a brief. A description of a brief begins on page 6. Skip the “WHEN you must file the brief” section and the directions for the cover page, but incorporate all the other sections into your answer. **NOTE:** You will be able to copy these sections later if the application is granted and you need to file a brief.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

[REDACTED],

Plaintiff-[REDACTED],

COA No. [REDACTED]

(1)

v

Lower Ct/Tribunal No. [REDACTED]

[REDACTED],

Defendant-[REDACTED]

_____ /

ANSWER TO APPLICATION

(3)

[REDACTED]

Appellee's Brief

WHEN Must you File the Brief?

If this is a child custody or termination of parental rights case, or an interlocutory criminal appeal, your appellee's brief is due 21 days after the date on the proof of service of appellant's brief. **MCR 7.212(A)(2)(a)(i)**

In all other cases, your appellee's brief is due 35 days after the date on the proof of service of appellant's brief. **MCR 7.212(A)(2)(a)(ii)**

HOW Must you File the Brief?

You must file five (5) copies of your brief, which must have the following general format characteristics: **MCR 7.212(A)(2)(a) & (B)**

1. At least 1" margins on the top, bottom, and both sides.
2. Printed legibly or typed in not smaller than 12-point type, including footnotes.
3. Double-spaced. Footnotes and quotations can be single-spaced.
4. No more than 50 pages, not counting indexes and appendices. The pages must be numbered consecutively. You may number the pages of the indexes and appendices in small roman numerals (i.e. i, ii, iii, etc.) and then begin the numbers of the remainder of the brief in Arabic numbers (i.e. 1, 2, 3, etc.).

There are several sections necessary in a brief. The first is:

Brief Cover Page

What you must do:

You may photocopy the form on the facing page and simply type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appeared on your appearance or on the documents that appellant filed. You will probably know the Court of Appeals number (COA No.) now, so you should include it.
- (2) Check one of the boxes to indicate whether or not you are requesting oral argument in front of the judges who will decide this appeal. If you are incarcerated, it is not likely that you will be able to appear and argue, so you would not request it.
- (3) Type or print legibly your full name, address and telephone number. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living. [Incarcerated persons must place their prisoner number on all documents filed in this Court so that return correspondence will be routed back to them properly.] **Please send this Court a change of address notification immediately if you move.**

MCR 7.212(C)(1) & (D)(1)

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

Plaintiff-_____,

COA No. _____.

(1)

v

Lower Ct/Tribunal No. _____.

_____,

Defendant-_____.

(2)

ORAL ARGUMENT

☐ **REQUESTED**

☐ **NOT REQUESTED**

APPELLEE’S BRIEF

(3)

Table of Contents Section

What you must do:

You must provide a table of contents listing the section headings of the brief and citing the page number(s) where each is located. **MCR 7.212(C)(2) & (D)(1)** You may photocopy the form on the facing page and simply type or print legibly the information required in the shaded areas as described below.

Each of the individual sections is explained in detail on the following pages. Once you have completed your brief you must fill in the page numbers where each section starts.

Each argument you list should correspond to a question in the “Statement of Questions Involved” in order of presentation. **MCR 7.212(C)(2) & (D)(1)** That is, Argument I should correspond with Question I, and they should be discussed first in the full argument section.

Under “Statement of Argument,” write the principal point of your argument. It should be only one or two sentences long. Then note the page number where your full argument is presented.

Example:

If the first question in the Statement of Questions Involved is as follows:

- I. WHETHER THE TRIAL COURT ERRED IN GRANTING DEFENDANT-APPELLEE SUMMARY DISPOSITION BECAUSE THE STATUTE OF LIMITATIONS HAD RUN.

Your first statement of argument might be something like:

THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANT-APPELLEE SUMMARY DISPOSITION BASED ON THE STATUTE OF LIMITATIONS, BECAUSE THE DISCOVERY RULE IS NOT APPLICABLE IN THIS CASE.

Repeat the argument structure shown if there are additional arguments.

TABLE OF CONTENTS

	<u>Page No.</u>
Index of Authorities
Jurisdictional Statement
Statement of Questions Involved
Statement of Facts
Argument I:
Standard of Review
Statement of Argument:
.....	
Argument II:	
Standard of Review
Statement of Argument:
.....	
Relief Requested

Index of Authorities Section

What you must do:

You must list, in alphabetical order, all cases cited in your brief. Each case must have the complete citation, including the year of decision. You must list all the pages on which the case citation appears. **MCR 7.212(C)(3) & (D)(1)**

You must also list all other authorities that you cite. This would include statutes (including parallel citations), legal encyclopedias, law review articles, etc. **MCR 7.212(C)(3) & (D)(1)**

You may photocopy the form on the facing page and simply type or print legibly the citations and page numbers.

Use additional pages as needed.

INDEX OF AUTHORITIES

Page Nos.

Cases:

.

Statutes:

Other:

Statement of Jurisdiction Section

The appellant must provide the Court of Appeals with sufficient information to show that the Court has jurisdiction over (i. e. the legal authority to review) the appeal. **MCR 7.212(C)(4)** As appellee, you must state whether the jurisdictional summary stated in the appellant's brief is complete and correct. If it is not, you must provide your own jurisdictional summary. **MCR 7.212(C)(4) & (D)(1) & (2)**

What you must do:

You may photocopy the form on the facing page to use if you wish. Check one of the boxes at the top of the form to indicate whether you agree that the Court of Appeals has jurisdiction over this appeal or whether you disagree that the Court of Appeals has jurisdiction. **NOTE: Please do not challenge the jurisdiction of the Court of Appeals unless you can support the challenge by legal authority, such as statutes or court rules.** If you do not agree that the Court of Appeals has jurisdiction, then type or print legibly the following information in the **shaded** areas provided. **MCR 7.212(C)(4)(a)**

- (1) The date of the judgment or order being appealed. **MCR 7.212(C)(4)(a)(i)**
- (2) If you or the appellant filed a motion for new trial, rehearing or reconsideration, or other postjudgment relief in the lower court or tribunal, state the date on which the motion was filed and the date of the entry of the order deciding the motion. **MCR 7.212(C)(4)(a)(ii)**
- (3) The date the claim of appeal or application for leave to appeal was filed. **MCR 7.212(C)(4)(a)(iv)**
- (4) You must state the statute or court rule which supports your argument that the Court of Appeals does not have jurisdiction over this appeal. **MCR 7.212(C)(4)(a)**
If appellant filed a claim of appeal, then jurisdiction is most likely based on MCR 7.203 & 7.204. If appellant filed an application for leave to appeal which was granted, jurisdiction is most likely based on MCR 7.203 & 7.205.

STATEMENT OF JURISDICTION

Check only one box.

I agree that the Court of Appeals has jurisdiction over this appeal.

**I do not agree that the Court of Appeals has jurisdiction over this appeal.
Following is my jurisdictional summary.**

- (1) The judgment or order being appealed was entered on . . .
- (2) A motion for postjudgment relief was filed on . . . The order deciding that motion was entered on . . .
- (3) This appeal was filed on . . .
- (4) Based on the above information, the Court of Appeals does not have jurisdiction over this appeal based on the following court rule or statute: . . .

Statement of Questions Involved Section

You may either accept the appellant's statement of the legal questions involved in this appeal or write a counter-statement of questions. However, you cannot raise new questions without filing a cross-appeal: you may only restate or correct how appellant stated the question. **MCR 7.212(C)(5) & (D)(1) & (3)(a)**

What you must do:

You may photocopy the form on the facing page and check one of the boxes indicating whether you accept appellant's statement of questions or whether you will write a counter-statement of questions. If you write a counter-statement, type or print legibly your questions in the **shaded** areas provided. You must concisely state the issues or questions, and note the page number on which your corresponding argument begins. Each question must be stated and numbered separately, and be followed by the circuit court's, appellant's and your answer to the question. The answer(s) to the questions should usually be "Yes" or "No."

Examples of questions might be:

- I. WHETHER THE TRIAL COURT ERRED IN ADMITTING EVIDENCE OF APPELLANT'S UNFAITHFULNESS DURING THE MARRIAGE, AND CONSIDERING FAULT IN DIVIDING THE MARITAL PROPERTY.

The trial court and appellee answers: No

Appellant answers: Yes

- II. WHETHER THE TRIAL COURT ERRED IN CONSTRUING THE PHRASE "ALL PARTIES TO THE CONTRACT" TO INCLUDE THE APPELLANT.

The trial court and appellee answers: No

Appellant answers: Yes

Continue adding to the question numbers as needed. **Use additional pages as needed.**

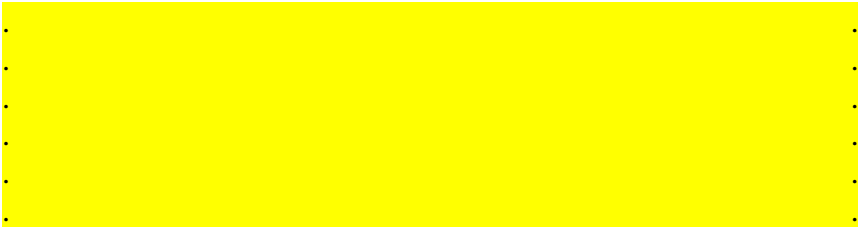

STATEMENT OF QUESTIONS INVOLVED

Check only one box.

☐ I accept appellant's statement of questions involved.

☐ Following is my counter-statement of questions involved.

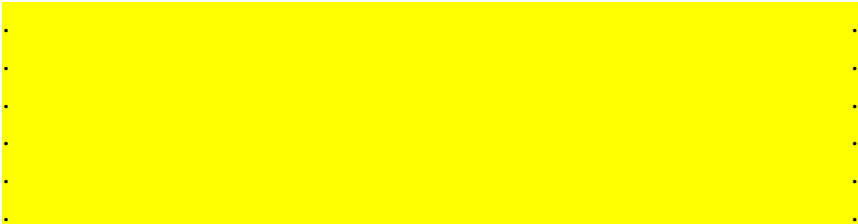

Page No.

I.  

The trial court or tribunal answers:

Appellant answers:

Appellee answers:

II.  

The trial court or tribunal answers:

Appellant answers:

Appellee answers:

Statement of Facts Section

You may either accept the appellant's statement of facts or write a counter-statement of facts. **MCR 7.212(C)(6) & (D)(1) & (3)(b)**

What you must do:

You may photocopy the form on the facing page and check one of the boxes indicating whether you accept appellant's statement of facts or whether you will write a counter-statement of facts. If you write a counter-statement, you must point out the inaccuracies and deficiencies in the appellant's statement of facts, but fairly state the material facts even when they are not favorable to you. You must also show the Court of Appeals where in the lower court or tribunal record your statement of each fact is supported. For example, you must cite a specific page of a transcript, or note some other document which is part of the lower court or tribunal record.

Use additional pages as needed.

STATEMENT OF FACTS

Check only one box.

☐ **I accept appellant's statement of facts. However, additional facts may be stated in each argument section.**

☐ **Following is my counter-statement of facts.**

Arguments Section

This is the portion of the brief in which you provide your thorough, but concise, legal analysis, and try to persuade the Court of Appeals judges of your position. The argument section must be formatted as described below. **MCR 7.212(C)(7) & (D)(1)**

What you must do:

You may photocopy the form on the facing page and type or print legibly the following information in the **shaded** areas provided.

- (1) You must state the principal point of your argument in CAPITAL or **boldface** lettering at the top of each argument. You may simply copy the principal point from your Table of Contents if you wish.
- (2) Standard of Review. You may just state, “I accept appellant’s standard of review for this issue” if you wish. **MCR 7.212 (D)(2)** Otherwise, you must write a counter-statement of the standard of review, with supporting authority. The Court of Appeals’ review of an appeal is limited by the legal standard imposed on it. Your legal research will need to include what that standard is for each issue. Many trial issues, such as whether the trial court should have admitted certain evidence, are reviewable under the “abuse of discretion” standard. Here is an example of how that standard in a civil case can be stated:

The decision whether to admit or exclude evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Chmielewski v Xermac Inc*, 457 Mich 593, 613-614 (1998). An appellate court will find an abuse of discretion if the trial court’s decision was so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or an exercise of passion or bias. *Dacon v Transue*, 441 Mich 315, 329 (1992).

However, there are other standards applicable to other situations, such as the standards of review for findings of fact, administrative agencies, custody matters, sentencing, sufficiency of the evidence, etc.

- (3) Analysis. Thoroughly, but concisely, cite and explain the applicable law for the issue involved, show how it applies to the facts of this case, and explain why it should lead the judges to conclude that your position is correct.

Use additional pages as needed.

ARGUMENTS

I.

(1)

Standard of Review:

(2)

Analysis:

(3)

Relief Requested Section And Signature

What you must do:

- (1)** You must provide a concluding paragraph that explains to the Court of Appeals judges what you want them to do. **MCR 7.212(C)(8) & (D)(1)** An example of relief you might request is:

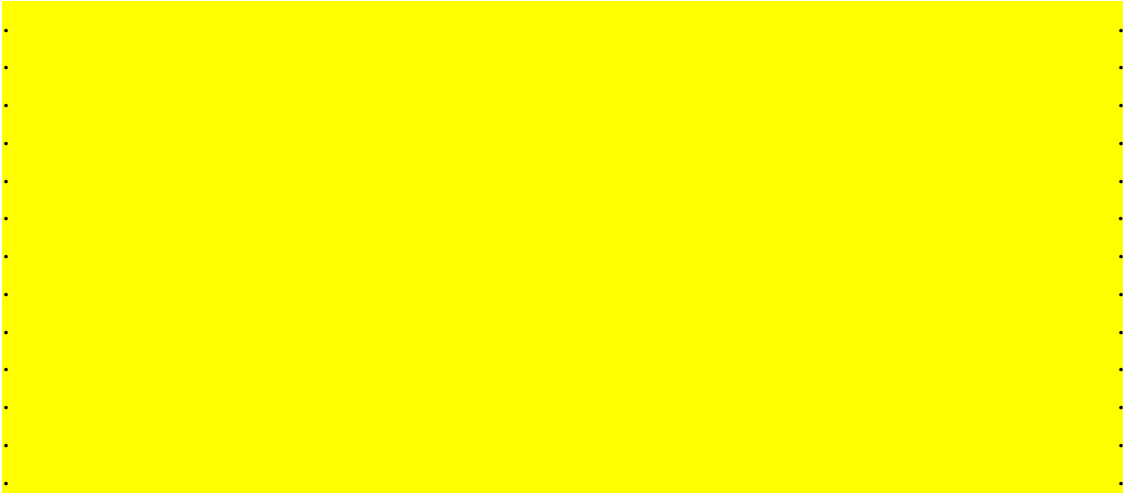
Based on the above analysis, appellee requests this Court to affirm the judgment of \$1,000,000 in his favor.

- (2)** You must also sign the brief. **MCR 7.212(C)(9) & (D)(1)**

You may photocopy the form on the facing page and type or print legibly the relief you request and sign your name in the shaded areas provided.

RELIEF REQUESTED

(1)



(2)



Proof of Service

As noted earlier, you must provide proof to the Court of Appeals that you served a copy of all documents you filed/are filing on all parties in this case.

What you must do:

You may photocopy the attached form and type or print legibly the following information in the **shaded** areas provided.

- (1) The caption as it appears on the document you are filing (i.e. appearance, answer to application or brief).
- (2) The county in which the person who actually served these documents was located. For example, if you mailed these documents from your home, you would put the county in which your home is located.
- (3) The first shaded area on this line is for the date on which the documents were served.
- (4) The second shaded area on this line is for you to state how the documents were served: put the word “mailed” if they were sent in the mail, or put the word “hand-delivered” if they were personally handed to the person(s) served.
- (5) State the full names and addresses of all the parties or their attorneys to whom the documents were mailed or hand-delivered. If a party is represented by an attorney, the documents must be served on the attorney, and you must indicate which party the attorney represents.
- (6) List all documents that were served on the other parties. This would include a copy of this proof of service, in addition to the appearance, answer to application, brief or whatever other document was served.
- (7) The current date.
- (8) The signature of the person who actually served the documents. If you served the documents yourself, then you must sign.
- (9) Type or print legibly the full name, address and telephone number of the person who served the documents.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____ ,

Plaintiff- _____ , COA No. _____ .

(1) v Lower Ct/Tribunal No. _____ .

_____ ,

Defendant- _____ .

PROOF OF SERVICE

State of Michigan)

(2) County of _____)

(3,4) I affirm that on _____ , I _____ one copy of

(5) the following documents on: _____ .

_____ :

(6) Proof of Service, _____ .

(7) Date: _____

(8) _____

(9) _____

